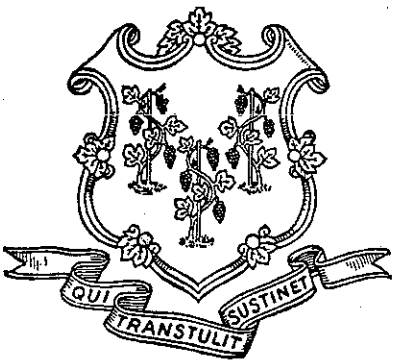
CONNECTICUT STATE DENTAL COMMISSION

Connecticut

General Assembly



LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

JANUARY 1991

CONNECTICUT GENERAL ASSEMBLY

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 to evaluate the efficiency, effectiveness, and statutory compliance of selected state agencies and programs, recommending remedies where needed. In 1975, the General Assembly expanded the committee's function to include investigations, and during the 1977 session added responsibility for "sunset" performance reviews. The committee was given authority to raise and report bills in 1985.

The program review committee is composed of 12 members. The president pro tempore of the senate, the senate minority leader, the speaker of the house, and the house minority leader each appoint three of those members.

1989-1990
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CONNECTICUT STATE DENTAL COMMISSION
PERFORMANCE EVALUATION

LEGISLATIVE PROGRAM REVIEW AND
INVESTIGATIONS COMMITTEE
JANUARY 1991

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EXECUTIVE SUMMARY

The Legislative Program Review and Investigation's review of the Connecticut State Dental Commission resulted in a series of recommendations designed to improve the operations of the dental commission and to clarify through both statute and regulation the level of supervision a dentist must exercise over treatment provided by a dental hygienist. Statutorily defining the types of supervision a dental hygienist may operate under and requiring the development of regulations outlining the degree of supervision needed when a hygienist is performing specific dental procedures will eliminate the confusion that currently exists among dental professionals and ensure consistency across the state. Below are the recommendations adopted by the committee in December 1990.

RECOMMENDATIONS

1. The Connecticut State Dental Commission should include one dentist who is a full-time member of the clinical faculty from a school of dental medicine.

2. "General Supervision" shall mean that the dentist authorizes the treatment procedure prior to implementation but does not have to be physically present in the treatment facility.

"Direct Supervision" shall mean that the dentist is in the treatment facility while the duties are being performed. In order to directly supervise patient treatment, the dentist must diagnose the condition to be treated, authorize the treatment procedure prior to implementation, and examine the condition after treatment.

3. The Department of Health Services, with the advice and assistance of the dental commission, shall develop regulations specifying what procedures a dental hygienist may perform under the general supervision of a dentist and what procedures may be performed under the direct supervision of a dentist.

The Department of Health Services, with the advice and assistance of the dental commission, shall develop standards defining what procedures require follow-up by the dentist, and for those procedures requiring follow-up, the timeframe in which the follow-up must be performed, regardless of the level of supervision (general or direct).

4. The Department of Health Services annually compile and report statistics on complaints and disciplinary actions to the Connecticut State Dental Commission.

5. nonprofit clinics be added to the list of exceptions found in C.G.S. Sec. 20-122 on the ownership and operation of dental offices.

SECTION I

INTRODUCTION

In February 1990, the Legislative Program Review and Investigations Committee authorized a review of the Connecticut State Dental Commission. The study concentrated on four areas: 1) the degree of regulation of dental professionals in the state, particularly dental hygienists; 2) the responsibilities of the dental commission in regulating dental professionals; 3) the relationship between the Department of Health Services (DOHS) and the dental commission; and 4) the complaint and disciplinary process for those practicing dentistry and dental hygiene.

METHODOLOGY

In conducting the review, a variety of sources were used. Interviews were held with employees of the Medical Quality Assurance Division within DOHS, the chairman of the Dental Commission, and members of the Connecticut State Dental Association and the Connecticut Dental Hygienist Association. In addition, program review committee staff attended a meeting of the commission and reviewed two years of minutes to determine the scope of decision-making exercised.

Committee staff also observed a meeting of an ad hoc committee consisting of the director of the Medical Quality Assurance Division, commissioners of the Dental Commission, and members of both the Connecticut Dental Association, and the Connecticut Dental Hygienists Association. The ad hoc committee was formed by the DOHS with the purpose of facilitating discussion over issues such as dental hygienists' scope of practice.

This report outlines the major responsibilities of the commission, summarizes the statutory powers governing the operations of the Dental Commission, and describes the commission's relationship to the Department of Health Services. The licensure process for Connecticut dentists and dental hygienists and summary data on licensees in the state is provided in Section II of this report. Section III describes the process followed when a complaint against a dentist or dental hygienist is received, and analyzes data on complaints received by the commission from 1980 through 1989. Section IV contains findings and recommendations adopted by the Legislative Program Review and Investigations Committee to improve the operations of the dental commission and clarify the degree of supervision a dentist must exercise over a dental hygienist's performance.

STATUTORY OVERVIEW

The Connecticut State Dental Commission is the regulatory body responsible for oversight of dental practices in Connecticut. The commission is a gubernatorially-appointed, 11-member body comprised of five dentists, two dental hygiene practitioners, and four members of the public.

By statute, members of the dental commission are not allowed to serve more than two consecutive terms. The commission is required to meet at least once during each calendar quarter. Furthermore, any member who fails to attend three consecutive meetings or 50 percent of all meetings held during the calendar year is considered resigned from office.

Connecticut's Dental Practice Act covers five major areas:

- the commission, its composition and responsibilities;
- licensing of dentists and hygienists;
- permitted and prohibited functions for dental hygienists and assistants;
- disciplinary actions; and
- business practices.

As of December 31, 1989, there were 3,106 dentists and 2,889 dental hygienists licensed to practice in the state.

The commission has the authority to:

- adjudicate complaints filed against practitioners;
- hear and decide matters concerning license suspension or revocation;
- impose sanctions; and
- determine reputable educational institutions (for purpose of licensing);

The commission may penalize any practitioner if the practitioner: obtains a licen<x through deceit; is incompetent, negligent, cruel, or displays indecent conduct towards patients; violates any statutory provision or regulation; acts in an unprofessional manner; designates a limited practice without the approval of the commission; engages in fraud; is physically or mentally ill; or is a drug and/or alcohol abuser.

The disciplinary sanctions available to the commission for any of the above infractions include revocation or suspension of a license, letters of reprimand, censure, or civil penalties. The licensee can appeal the action of the dental commission to Superior Court when the penalty is suspension or revocation.

The DOHS also has a variety of powers and duties to regulate dental professionals in the state. The department works closely with the commission, using the commission's expertise when necessary. The department has the authority to:

- adopt regulations that protect the public health and safety with the advice and assistance of the dental commission, with the exception of any regulations concerning business practices;
- process applications and licenses;
- determine the eligibility of applicants for licensure; including giving consent to the approval or disapproval by the commission of schools at which educational requirements shall be met;
- administer licensing examinations under the supervision of the commission; and
- process and investigate complaints against licensed practitioners;

In addition, ownership and operation of dental offices is restricted by statute to individual licensed dentists and professional service corporations organized for dental practice with a few exceptions. Hospitals, schools, convalescent homes, certain governmental institutions, and industrial corporations which obtain special permission from the state dental commission may operate and provide dental services. Permission to operate may be revoked for cause after a hearing by the commission.

SECTION II

LICENSURE

The Council of State Government defined licensing as a process by which a government agency grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal degree of competency required to ensure that the public health, safety, and welfare will be reasonably well protected. Licensing makes it illegal for anyone who does not hold a valid license to engage in the occupation, profession, or trade covered by the statute.

All dentists and dental hygienists in the state of Connecticut must be licensed by DOHS. The department and the commission protect the public health, safety, and welfare through licensure by: 1) assuring the public that a practitioner has an acceptable level of competence; 2) keeping practitioners accountable through a review and discipline mechanism; and 3) providing the public with an alternative to having their complaints against practitioners resolved.

The Medical Quality Assurance Division receives and processes all applications, administers examinations, and determines eligibility for licensure. To practice dentistry in Connecticut, four criteria must be fulfilled. The licensed candidate must:

- have graduated from an accredited dental school;
- pass the National Board examination; and
- pass the clinical performance test of the North East Regional Board, the regional testing agency.

Upon completion of the above, a personal interview and written examination on Connecticut's dental practice act is conducted by the Department of Health Services. After these requirements are met, the department issues a license.

The requirements for obtaining a dental hygienist license are: a diploma from an accredited institution teaching dental hygiene; and passage of the National Board and clinical North East Regional Board exams. Also, eligible applicants are given a personal interview and must pass the written examination on Connecticut's Dental Practice Act.

Commission members serve as proctors for the National Board Examinations -- a test given to graduates of dental schools and dental hygienist programs. The commissioners are also North East Regional Board (N.E.R.B.) examiners, the regional testing agency, for the clinical examination. This exam fulfills the clinical

requirement and passage of both examinations is necessary for licensure in this state. All dental and dental hygiene members of dental commissions in the North East Region are used as examiners.

Out-of-state dental and dental hygienist applicants are licensed by endorsement. That is, in order to be eligible for licensure without examination in Connecticut, an applicant must hold a current valid license in a state which maintains standards for licensure which are equal to or greater than Connecticut. Under such an arrangement, individuals who are already licensed in one state may submit their credentials for evaluation to the state they wish to migrate. The applicant must also successfully complete the jurisprudence examination covering the Connecticut dental practice act. Currently 20 states are licensed by endorsement.

The Medical Quality Assurance Division is also responsible for the issuance of license certificates and for processing of license renewals. Licenses are renewed annually in the licensee's month of birth. The initial licensure application fee for dentists is $450 and $75 for dental hygienists. The renewal fee for dentists is $450 and $15 for dental hygienists.

As of December 31 1989, there were 3,106 dentists and 2,889 dental hygienists licensed to practice in the state. Of these, there were 178 new dental licenses issued in 1989 and 147 dental hygiene licenses. Figure 1 presents the total number of licensed dentists and hygienists for each profession since 1983. As shown, there has been moderate fluctuation in the number of dentists and dental hygienists over the seven year period.

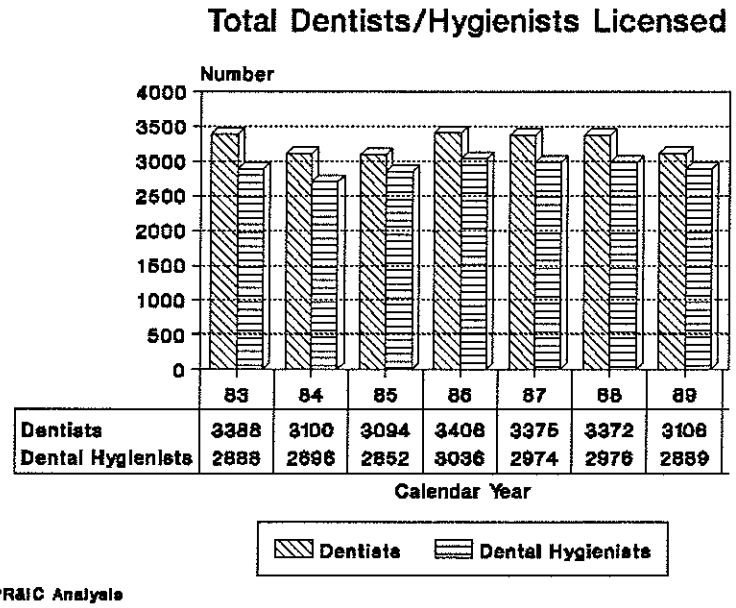


Figure 1

SECTION III

COMPLAINTS

A major function of professional regulation is the examination and investigation of complaints against practitioners. The Medical Quality Assurance Division is responsible for receipt and investigation of all complaints against dental practitioners. The process followed by the department when a complaint is received is depicted in Figure 2.

Upon receipt, a copy of the complaint is sent to the practitioner along with a letter from DOHS requesting a response. When the reply is received, the department decides on the validity of the complaint. Dismissal of the complaint occurs if the investigation produces insufficient grounds to proceed and the department writes the complainant explaining why the complaint has been dismissed. If the department decides there are grounds for disciplinary action, it will first seek to resolve the complaint informally. Informal resolution of a case means that the complaint is settled in favor of the complainant. If the informal process fails, the department will attempt resolution by consent order.

A consent order is an agreement accepted by the practitioner who waives the right to a formal hearing and accepts the penalty provided by the Dental Commission. Although the department negotiates and issues the consent order, the commission must approve it.

If a consent order is contested by the practitioner then an administrative hearing may be held. At such a hearing, the commission will determine what action should be taken, if any, against the regulated professional and, if appropriate, impose any sanctions within its authority.

The program review committee analyzed data on complaints filed against dentists from 1980 through 1989. The department investigated 962 complaints over the 10-year period. The overwhelming majority of complaints received (90 percent) were filed by consumers. In addition, all 962 complaints were against dentists with none filed against a dental hygienist.

Figure 3 shows the number of complaints registered in each year analyzed. The greatest number of complaints (141) were filed in 1981. The latest information shows that the department received 115 complaints in 1989, with 168 days the average length of time to resolve a complaint.

FIGURE 2.

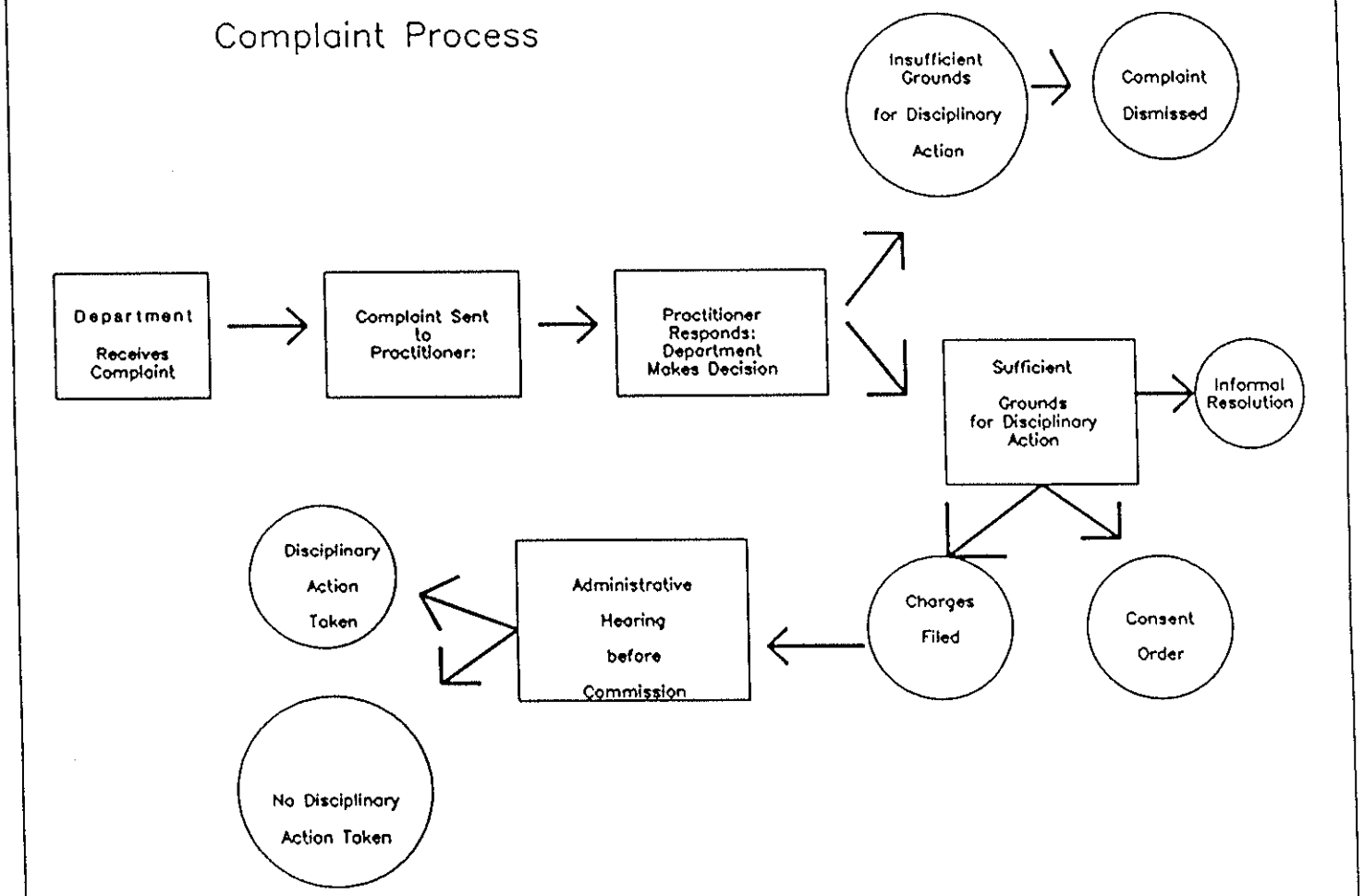
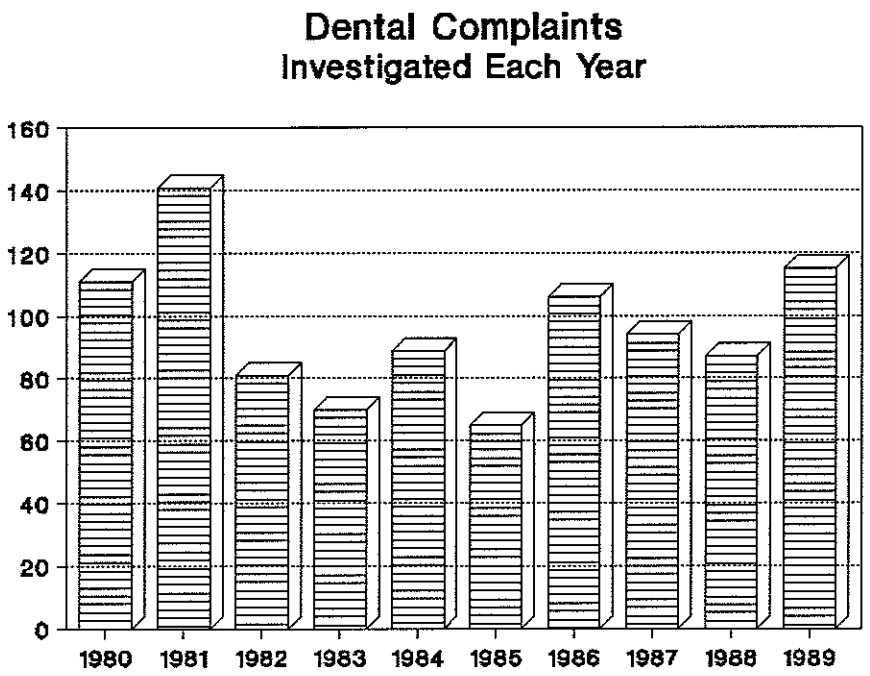
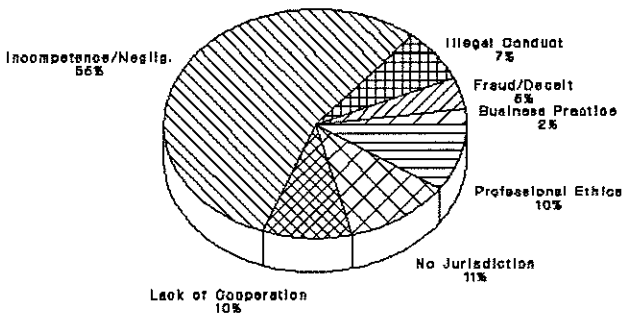

Complaint Process
Insufficient Grounds for Disciplinary Action
Complaint Dismissed
Department Receives Complaint
Complaint Sent to Practitioner:
Practitioner Responds: Department Makes Decision
Sufficient Grounds for Disciplinary Action
Informal Resolution
Disciplinary Action Taken
Administrative Hearing before Commission
Charges Filed
Consent Order
No Disciplinary Action Taken

Figure 3



• As of Dec. 31. LPR&IC Analysis.

Figure 4



LPR&IC Analysis.

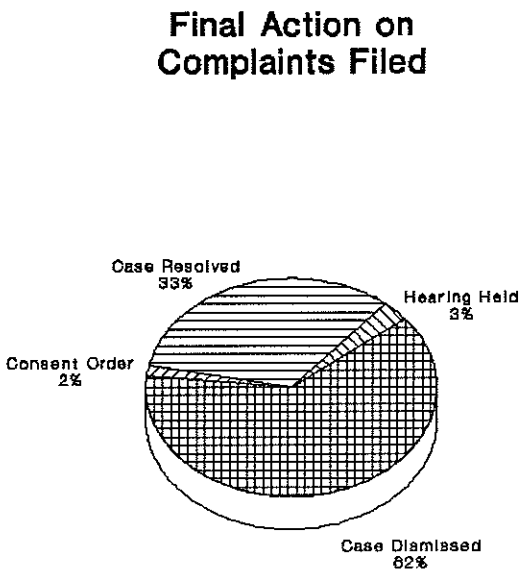
There are several reasons why a consumer may lodge a complaint with the department. Figure 4 provides a breakdown of the reasons for the complaints and shows that 55 percent were for incompetence and/or negligence. Only 5 percent of the complaints received charged the dentist with fraud and deceit.

Figure 5 depicts the final outcome of the complaints filed. The majority of complaints, 62 percent, were dismissed. A large portion (33 percent) were closed because the case had been resolved informally. The remaining actions taken - a consent order issued or a hearing held - accounted for only 5 percent of the final actions taken over the 10-year period.

As mentioned previously, the commission has a wide range of disciplinary sanctions it may impose. These disciplinary options can only be imposed through an order. Figure 6 shows the disciplinary actions taken by the Dental Commission over the ten-year period. Of the 45 cases where an order was issued, 27 (60 percent) resulted in license suspension. However, of those 27, 20 suspensions occurred in 1980 and 1981. The commission hasn't suspended a practitioner's license since 1986. License revocation and a formal reprimand occurred only once each in the nine years examined.

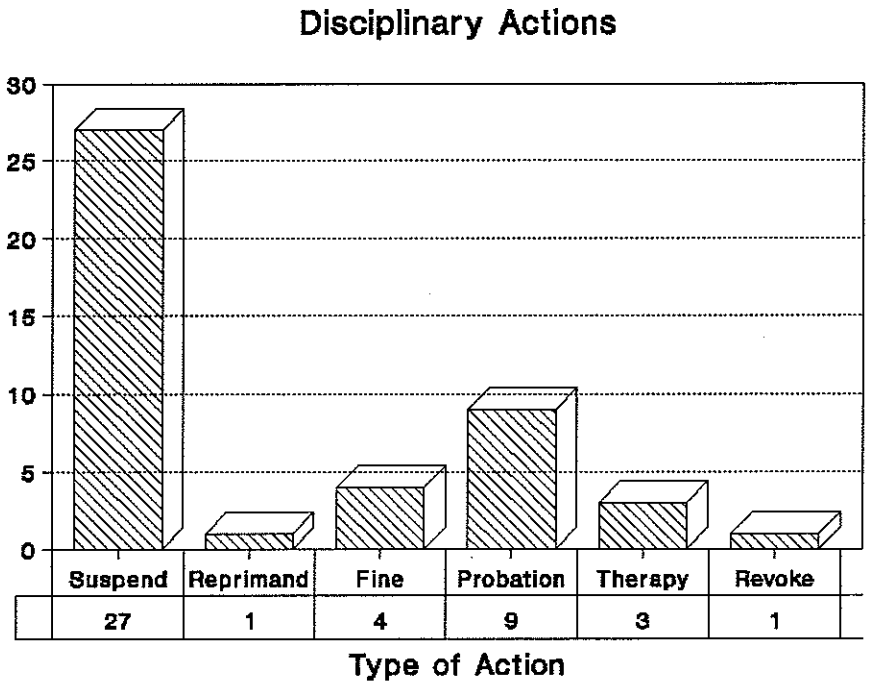
The Medical Quality Assurance Division provided the program review committee with complaint data on other licensed health professions. Table 1 lists each profession and compares the total number of licensees and complaints filed against them for 1989, as well as a ratio of complaints to licensee.

Figure 5



LPR&IC Analysis.

Figure 6



LPR&IC Analysis.

Table 1. Comparison of Health Profession Complaints in 1989.

Profession	Total Number Licensed	Total Complaints Received	Complainant per 100 Licensees
Podiatrists	363	16	4.41
Dentists	3,106	126	4.06
Optometrists	621	14	2.25
Physicians	11,220	117	1.04
Phys. Therapist	2,609	6	.23
Registered Nurse	47,725	50	.10
Dental Hygienists	2,889	0	0.0

Source: Department of Health Services.

SECTION IV

FINDINGS AND RECOMMENDATIONS

The Legislative Program Review and Investigation's review of the Connecticut State Dental Commission resulted in a series of recommendations designed to improve the operations of the dental commission and to clarify through both statute and regulation the level of supervision a dentist must exercise over treatment provided by a dental hygienist. Statutorily defining the types of supervision a dental hygienist may operate under and requiring the development of regulations outlining the degree of supervision needed when a hygienist is performing specific dental procedures will eliminate the confusion that currently exists among dental professionals and ensure consistency across the state.

Dental Commission Composition

The program review committee found the current composition of the dental commission does not include a dentist from an academic setting. Rather, all five dentists who sit on the commission are from private dental practices. The committee believes input obtained from an individual who is employed full-time in teaching dental students and knowledgeable of new dental techniques could be a valuable resource to the commission. A faculty member from a school of dental medicine would be cognizant of "state of the art" procedures and familiar with current research on a variety of dental issues. Therefore, the Legislative Program Review and Investigations Committee recommends that:

> **The Connecticut State Dental Commission should include one dentist who is a full-time member of the clinical faculty from a school of dental medicine.**

This recommendation would have a significant impact upon the dental commission's viewpoint and efforts. It would not change the current number of members on the commission, but rather require that one of the five dentists appointed to the commission be from an academic setting.

Level of Supervision for Dental Hygienists

Most states' laws or regulations pertaining to dental practices specify the type of supervision a dentist must exercise over a dental hygienist's performance. The required oversight generally falls into two categories, general supervision or direct supervision, depending on the function to be performed. General supervision requires the dentist to authorize and instruct the

dental hygienist to perform certain procedures, but does not require the dentist to be physically present in the facility when treatment is rendered. Direct supervision requires the dentist diagnose the condition to be treated, authorize the treatment procedure, be present in the treatment facility while the dental hygienist performs the assigned tasks, and provide follow-up to ensure treatment is appropriate. In either case, the supervising dentist has ultimate responsibility for the dental hygienist's work.

Other states. Almost all states require some type of supervision of dental hygienists by dentists. Only three states, Colorado, Washington, and California, allow dental hygienists to practice unsupervised. However, in Washington, hygienists must fulfill two years of practical clinical experience, and unsupervised practice is limited to hospitals, nursing homes, group homes, certain state institutions, and other government-related public health facilities. California is beginning a pilot project to allow unsupervised practice in public health clinics and nursing homes.

Connecticut statutes, although stating that the dentist is responsible for treatment provided by dental hygienists, do not use the terms "general" and "direct" supervision, and do not specify if a dentist must be physically present when a dental hygienist renders treatment. In Connecticut's Dental Practice Act, the words "under said dentist's supervision and control" are used in one sentence and in the same paragraph the words "under the general direction of a licensed dentist" are used but neither terms are defined by statute or regulation.

The Department of Health Services has interpreted "general direction" to mean that the dentist need not be present in the office when the dental hygienist is providing simple treatment. However, when the dental hygienist is conducting more sophisticated procedures, the department has interpreted the words "supervision and control" to mean the dentist must be present in the treatment facility.

To clarify existing statutory language, the program review committee recommends the following definitions for general and direct supervision be incorporated into statute.

> **"General Supervision" shall mean that the dentist authorizes the treatment procedure prior to implementation but does not have to be physically present in the treatment facility.**
>
> **"Direct Supervision" shall mean that the dentist is in the treatment facility while the duties are being performed. In order to directly supervise patient treatment, the dentist must diagnose the condition to be**

treated, authorize the treatment procedure prior to implementation, and examine the condition after treatment.

This recommendation would clarify current policy. Presently, dental hygienists operate in public schools, convalescent homes, and other settings where preventative dental care is not readily available. These institutions employ dental hygienists who work under the general supervision of a dentist; that is, the dentist authorizes the procedures for the hygienist to perform, but does not have to be present when treatment is provided.

The proposal would provide an opportunity for those individuals in schools, convalescent homes, and such settings, who do not typically obtain preventative dental care to receive it. Institutions such as those cited above could employ a hygienist to provide patient care without requiring a dentist's presence in the facility, use a consulting dentist to provide dental diagnosis and treatment planning, create an employment arrangement that is less expensive for the participating institution and, most importantly, the clientele of these institutions would continue to be provided with needed dental care.

Statutorily defining the above terms continues to allow flexibility in the service delivery system. However, the program review committee believes clearer directives are necessary so both dentists and dental hygienists understand the treatment that may be provided by a hygienist with and without the presence of a dentist in the treatment facility. Therefore, the program review committee recommends:

The Department of Health Services, with the advice and assistance of the dental commission, shall develop regulations specifying what procedures a dental hygienist may perform under the general supervision of a dentist and what procedures may be performed under the direct supervision of a dentist.

The Department of Health Services, with the advice and assistance of the dental commission, shall develop standards defining what procedures require follow-up by the dentist, and for those procedures requiring follow-up, the timeframe in which the follow-up must be performed, regardless of the level of supervision (general or direct).

This recommendation permits the dental commission to actively use its expertise in the dental area and fulfill its statutory role in providing advice to the department. In addition, by requiring the department to develop regulations, this will ensure legislative input and public comment into the process. Finally, the recommendations will ensure consistency among practitioners, promote

equitable treatment of dental hygienists within the state, and dispel the confusion that currently exists.

Disciplinary Action

As mentioned in Section III of this report, the number of disciplinary actions taken by the dental commission against dental professionals in the state has decreased. The latest information shows that the department received 115 complaints in 1989, and on average took 168 days to resolve. The program review committee believes that the department and the dental commission is unaware of the length of time it takes for resolution of a complaint to occur and that efforts should be made by the department to resolve complaints more promptly. Specifically, the program review committee recommends:

> **The Department of Health Services annually compile and report statistics on complaints and disciplinary actions to the Connecticut State Dental Commission.**

This recommendation will allow the commission to become more fully aware of the nature of complaints that the department receives and the timeframes for their resolutions. Furthermore, it will assist in tracking both the department's and the commission's responsiveness to consumers.

Nonprofit Clinics

With a few exceptions, ownership and operation of dental offices is restricted by statute to individual licensed dentists and professional service corporations organized for dental practice. Hospitals, schools, convalescent homes, certain governmental institutions, and industrial corporations must seek special permission from the state dental commission to operate. Permission to operate may be revoked for cause after a hearing by the commission.

Connecticut has six legally established nonprofit clinics. The Dental Commission must grant permission for nonprofit clinics to operate. However, the commission has rejected permits on the basis that "nonprofit clinics" are not listed in the practice act and therefore the commission cannot issue a permit.

The status of nonprofit clinics is unclear in statute. The program review committee recommends that:

> **nonprofit clinics be added to the list of exceptions found in C.G.S. Sec. 20-122 on the ownership and operation of dental offices.**

This recommendation would ensure that dental care is available to those individuals that cannot afford private dental care. In addition, it would clarify the authority of the dental commission in granting nonprofit clinics permission to operate.

AGENCY RESPONSE

STATE OF CONNECTICUT

DEPARTMENT OF HEALTH SERVICES

BUREAU OF HEALTH SYSTEM REGULATION

Hospital & Medical Care
Medical Quality Assurance
Emergency Medical Services
Community Nursing & Home Health

January 22, 1991

Maryellen Duffy
Associate Analyst
Legislative Program Review and Investigation Committee
State Capitol Room 506
Hartford, CT 06106

Dear Ms. Duffy:

Thank you for the opportunity for this agency to review and comment on your draft report on the State Dental Commission.

I have the following comments in two areas: (1) level of supervision for dental hygienists; and disciplinary action.

Level of Supervision for Dental Hygienists

The Committee recommends that definitions of "general" and "direct" supervision of dental hygienists be incorporated in the statute, and further, that the Department of Health Services promulgate regulations specifying what procedures dental hygienists may perform under each level of supervision.

This recommended approach is not consistent with that for other regulated professions. As these are matters concerning scope of practice, it is appropriate that they be delineated in statute rather than regulation, as is the case for all other regulated health professions. These are matters which are appropriately subject to full legislative review.

Additionally, dental hygienists do now function in public health and other settings where direct supervision is not available. To the extent that aspects of a dental hygienist's functions are delineated which may only be performed under direct supervision, there is the potential to introduce restrictions on the types of care which would be available in those settings.

Disciplinary Action

The report states on page 22 that "The program review committee believes that the department and the dental commission is (sic) unaware of the length of time it takes for resolution of a complaint to occur and that efforts should be made by the department to resolve complaints more promptly." It is recommended that Department of Health Services annually compile and report statistics on complaints and disciplinary actions to the Dental Commission.

Phone:
150 Washington Street - Hartford, Connecticut 06106

We would note that the Department has more than adequate mechanisms in place to track complaints and case status. Furthermore, the Department presently prepares monthly, quarterly, and annual reports on complaints and disciplinary actions for all regulated professions. However, to the extent that the Committee believes the Dental Commission would be better served by its own unique and perhaps more detailed annual report, the Department certainly can provide same.

Sincerely,

Stephen A. Harriman
Bureau Chief

SAH:mwr

cc: Frederick G. Adams, D.D.S., M.P.H.
Commissioner

Stanley K. Peck, Director
Division of Medical Quality Assurance

Susan Heyward, Director
Center for Communications and Government Relations